

S-5190

1 Amend House File 2109, as amended, passed, and
2 reprinted by the House, as follows:

3 1. By striking everything after the enacting clause
4 and inserting:

5 <Section 1. NEW SECTION. 142B.1 Definitions.

6 As used in this chapter, unless the context
7 otherwise requires:

8 1. "*Electronic smoking device*" means any product
9 containing or delivering nicotine, whether or not made
10 or derived from tobacco, or other substance intended
11 for human consumption that can be used by a person
12 to simulate smoking including through inhalation
13 of vapor or aerosol from the product. "*Electronic*
14 *smoking device*" includes any component part of such
15 product whether or not sold separately. "*Electronic*
16 *smoking device*" does not include any product that
17 has been approved by the United States food and drug
18 administration for sale as a tobacco cessation product
19 and is being marketed and sold solely for that approved
20 purpose.

21 2. "*Retail permit*" means a permit issued pursuant
22 to section 453A.13 or 453A.47A to retailers of
23 cigarettes or tobacco products.

24 3. "*Retailer*" means any person in this state who
25 sells, distributes, or offers for sale for consumption
26 or possesses for the purpose of sale for consumption,
27 electronic smoking devices irrespective of quantity or
28 amount or the number of sales.

29 Sec. 2. NEW SECTION. 142B.2 Retail permits
30 required.

31 1. It shall be unlawful for a person other than
32 a holder of a retail permit to act as a retailer and
33 sell, distribute, or offer for sale electronic smoking
34 devices at retail under this chapter.

35 2. A retailer shall not sell, distribute, or
36 offer for sale any electronic smoking device until
37 an application has been filed and the fee prescribed
38 paid for a retail permit and until such retail permit
39 is obtained and only while such retail permit is not
40 suspended, unrevoked, or unexpired.

41 3. The provisions of chapter 453A applicable to
42 retail permit holders including but not limited to
43 section 453A.13, 453A.22, 453A.47A, and 453A.50 shall
44 also apply to retailers under this chapter, with the
45 exception of the application to electronic smoking
46 devices of requirements relating to the imposition of
47 a tax on and the affixing of stamps to cigarettes or
48 tobacco products.

49 Sec. 3. NEW SECTION. 142B.3 Access to electronic
50 smoking devices — compliance checks — manner of sale

1 — samples — marketing — penalties.

2 1. A person shall not sell, give, or otherwise
3 supply any electronic smoking device to any person
4 under eighteen years of age.

5 2. A person under eighteen years of age shall not
6 use, possess, purchase, or attempt to purchase any
7 electronic smoking device.

8 3. A retailer shall not sell or offer for sale
9 electronic smoking devices through the use of a
10 self-service display or a vending machine.

11 4. A retailer shall not give away electronic
12 smoking devices at any time in connection with the
13 retailer's business or for promotion of the business
14 or device.

15 5. A person shall not engage in commercial nonsale
16 distribution of electronic smoking devices. For the
17 purposes of this subsection, "*nonsale distribution*"
18 means the distribution to the public of electronic
19 smoking devices through the redeeming of a coupon or
20 use of a rebate or other promotional offer that results
21 in a person receiving such product for free or at a
22 nominal cost.

23 6. A person shall not market an electronic smoking
24 device in any outdoor area within five hundred feet
25 of a playground, school, high school, or any other
26 place used by persons under eighteen years of age for
27 recreational, educational, or other purposes.

28 7. A person shall not market electronic smoking
29 devices in the state in any place of business unless
30 the business ensures that no person younger than
31 eighteen years of age is present or permitted to enter
32 at any time.

33 8. Liquid refills for electronic smoking devices
34 shall only be sold in child resistant packaging.

35 9. Possession of an electronic smoking device
36 by an individual under eighteen years of age does
37 not constitute a violation under this section if the
38 individual under eighteen years of age possesses the
39 electronic smoking device as part of the individual's
40 employment and the individual is employed by a person
41 who holds a valid retail permit.

42 10. a. The alcoholic beverages division of the
43 department of commerce, a county, or a city may
44 directly enforce subsections 1 and 2 in district court
45 and initiate proceedings pursuant to section 453A.22
46 before a permit-issuing authority which issued the
47 retail permit against a retail permit holder violating
48 this section.

49 b. Payment and distribution of court costs, fees,
50 and fines in a prosecution initiated by a city or

1 county relating to subsection 1 or 2 shall be made as
2 provided in chapter 602 for violation of a city or
3 county ordinance.

4 c. If a county or a city has not assessed a penalty
5 as provided in section 453A.22, subsection 2, for a
6 violation of subsection 1, within sixty days of the
7 adjudication of the violation, the matter shall be
8 transferred to and be the exclusive responsibility of
9 the alcoholic beverages division of the department
10 of commerce. Following transfer of the matter, if
11 the violation is contested, the alcoholic beverages
12 division of the department of commerce shall request
13 an administrative hearing before an administrative
14 law judge, assigned by the division of administrative
15 hearings of the department of inspections and appeals
16 in accordance with the provisions of section 10A.801,
17 to adjudicate the matter pursuant to chapter 17A.

18 d. The provisions of section 453A.4 relating
19 to seizure of a false or altered driver's license
20 or nonoperator's identification card shall apply
21 to retailers and employees of retailers under this
22 chapter.

23 e. The alcoholic beverages division of the
24 department of commerce shall enhance and utilize the
25 tobacco compliance employee training program developed
26 pursuant to section 453A.5 to assess compliance with
27 subsections 1 and 2 by employees and prospective
28 employees of retailers. Civil penalties assessed under
29 section 453A.22 for violations of this subsections 1
30 and 2 shall be deposited in the tobacco compliance
31 employee training fund created in section 453A.2.

32 **Sec. 4. NEW SECTION. 142B.4 Penalties.**

33 1. a. (1) A person, other than a retailer, who
34 violates section 142B.3, subsection 1, is subject to
35 the same penalties applicable to a violation of section
36 453A.2, subsection 1.

37 (2) An employee of a retailer who violates section
38 142B.3, subsection 1, is subject to the same penalties
39 applicable to a violation of section 453A.2, subsection
40 1.

41 b. A person who violates section 142B.3, subsection
42 2, is subject to the same penalties applicable to
43 violations of section 453A.2, subsection 2.

44 c. (1) A person shall not be guilty of a violation
45 of section 142B.3, subsection 1 or 2, if conduct that
46 would otherwise constitute a violation is performed to
47 assess compliance with electronic smoking device laws
48 if any of the following applies:

49 (a) The compliance effort is conducted by or under
50 the supervision of law enforcement officers.

1 (b) The compliance effort is conducted with the
2 advance knowledge of law enforcement officers and
3 reasonable measures are adopted by those conducting
4 the effort to ensure that use of electronic smoking
5 devices by individuals under eighteen years of age does
6 not result from participation by any individual under
7 eighteen years of age in the compliance effort.

8 d. For the purposes of paragraph "c", "law
9 enforcement officer" means a peace officer as defined
10 in section 801.4 and includes persons designated under
11 section 142B.3, subsection 10, to enforce this section.

12 2. a. A retailer who violates section 142B.3,
13 subsection 3, is subject to the same penalties
14 applicable to a violation of section 453A.36,
15 subsection 6, or section 453A.36A, as applicable.

16 b. A retailer who willfully violates section
17 142B.3, subsection 1, or who violates another
18 provision of this chapter, is subject to the applicable
19 provisions of section 453A.22 for violations of section
20 453A.2 or other provisions of chapter 453A.

21 c. A retailer or employee of a retailer who
22 violates section 142B.3, subsection 1 or 3, is subject
23 to the provisions of section 453A.22 applicable to
24 a violation of section 453A.2 or section 453A.36,
25 subsection 6.

26 d. A retailer of an employee who violates section
27 142B.3, subsection 1, is subject to the provisions of
28 section 453A.22, subsection 3.

29 e. Section 453A.22, subsections 5, 6, and 7 shall
30 also apply to the suspensions or revocations of retail
31 permits resulting under this subsection.

32 3. Retailers shall be subject to other penalties
33 specified under chapter 453A including those specified
34 for certain violations pursuant to section 453A.31,
35 453A.37, and 453A.47A applicable to retail permit
36 holders.

37 **Sec. 5. NEW SECTION. 142B.5 Implementation,**
38 **application, and enforcement.**

39 For the purposes of implementation, application, and
40 enforcement of this chapter, nothing in this chapter
41 shall be construed to supersede the jurisdiction of
42 any city, county, township, school district, or other
43 political subdivision to adopt and enforce any local
44 law or regulation that is at least as restrictive as
45 those imposed under this chapter.>

46 2. Title page, lines 1 and 2, by striking <vapor
47 products and alternative nicotine products> and
48 inserting <electronic smoking devices>

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